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**RochesterTel**

March 15, 1993

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: CC Docket No. 92-297

Dear Ms. Searcy:

Enclosed for filing please find an original plus nine (9) copies of the Comments of Rochester Telephone Corporation in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed self-addressed envelope.

Very truly yours,

*Michael J. Shortley, III*  
Michael J. Shortley, III

cc: International Transcription  
Service

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FOC 6/10/93

In the Matter of )

Rulemaking To Amend Part 1 and )  
Part 21 of the Commission's Rules )  
To Redesignate the 27.5 - 29.5 GHz )  
Frequency Band and To Establish )  
Rules and Policies for Local )  
Multipoint Distribution Service )

CC Docket No. 92-297

COMMENTS OF ROCHESTER  
TELEPHONE CORPORATION

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MAR 16 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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March 15, 1993  
(3301F)

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CC Docket No. 92-297

COMMENTS OF ROCHESTER  
TELEPHONE CORPORATION

Introduction and Summary

Rochester Telephone Corporation ("Rochester") submits these comments in response to the Commission's Notice in this proceeding.<sup>1/</sup> In the Notice, the Commission proposes to redesignate the 27.5 - 29.5 GHz frequency band ("28 GHz band") from common carrier, point-to-point microwave service to a new, local multipoint distribution service ("LMDS").<sup>2/</sup> Rochester agrees with the Commission's proposal. LMDS promises a new and

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<sup>1/</sup> Rulemaking To Amend Part 1 and Part 21 of the Commission's Rules To Redesignate the 27.5 - 29.5 GHz Frequency Band and To Establish Rules and Policies for Local Multipoint Distribution Service, CC Dkt. 92-297, Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration, FCC 92-538 (released Jan. 8, 1993) ("Notice").

<sup>2/</sup> Notice, ¶ 3.

innovative means of offering both broadcast and telecommunications service to the public. The Commission should encourage such innovation. Moreover, the flexible rules that the Commission is proposing for utilization of the 28 GHz band will afford to potential licensees the flexibility that they need to tailor the services that they will offer.

The Commission is also proposing a series of rules governing the licensing and operation of systems in the 28 GHz band. In drafting these rules, the Commission should attempt to achieve five objectives: (1) widespread availability of LMDS; (2) a degree of regulation tailored to the services offered by LMDS licensees; (3) the potential for all participants to offer LMDS; (4) reasonable, yet ambitious, deployment requirements; and (5) procedures to ensure that LMDS licenses are awarded to the most qualified applicants.

First, the Commission should redesignate the 28 GHz band to LMDS. The Commission has correctly concluded that the 28 GHz band is currently underutilized and that demand exists for LMDS. This proposal encourages efficient spectrum utilization and will ensure the widespread availability of LMDS.

Second, in determining the regulatory status of LMDS, the Commission should take into account the various services that LMDS licensees may provide. Thus, while it may be appropriate to classify one-way broadcast services as private carriage,

such a classification for two-way services would be unwarranted. Such services are communications common carrier services and should be classified and regulated as such.

Third, the Commission should establish rules that permit all financially and technically qualified entities to apply for LMDS licenses. Rules restricting entry would be anticompetitive and deny to consumers the benefits of a competitive, open entry policy.

Fourth, the Commission should hold licensees to reasonable, yet ambitious, deployment schedules. However, the Commission's proposal that a licensee must make service available to ninety percent of the population residing in the licensed area within three years of grant of a construction permit<sup>3/</sup> is unrealistic. Rochester suggests that the Commission adopt a fifty percent requirement.

Fifth, the Commission should establish licensing procedures that encourage meritorious applications and discourage speculation. Toward this end, the Commission should utilize streamlined comparative hearing procedures to process applications. However, in the event that the Commission chooses to utilize lotteries, it should subject applicants to stringent technical and financial qualification criteria. In all events, the Commission should require LMDS licensees to

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<sup>3/</sup> Id., ¶ 32.

adhere to strict post-award construction and operation requirements.

Argument

I. THE COMMISSION SHOULD PROMOTE THE  
WIDESPREAD AVAILABILITY OF LMDS.

The Commission's proposal to reallocate the 28 GHz band to LMDS<sup>4/</sup> is correct. This spectrum band is significantly underutilized. Thus, continuing to reserve it for common carrier, point-to-point microwave service would constitute an inefficient utilization of scarce spectrum resources. Moreover, the Commission's tentative conclusion that significant demand for LMDS will materialize<sup>5/</sup> is also probably correct. LMDS can meet the needs for alternative broadcast media. LMDS technology is also capable of providing two-way communications services and hence can provide an alternative means of meeting customers' communications requirements. On this basis, the proposed reallocation of the 28 GHz band to LMDS will serve the public interest.

In addition, the Commission's proposals regarding the number of licenses, market definitions and technical requirements should also facilitate the development of LMDS. It appears that an LMDS licensee will require close to 1000 MHz

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<sup>4/</sup> Id., ¶ 3.

<sup>5/</sup> Id., ¶ 16.

of spectrum to offer an attractive service package.<sup>6/</sup>  
Therefore, the Commission's proposal to license two licensees per market makes sense.<sup>7/</sup>

Similarly, the use of the Rand-McNally Basic Trading Areas ("BTAs") to establish the geographic scope of LMDS licenses is appropriate. The BTAs define areas that share significant communities of interest. The BTAs are also sufficiently small that licensees should be able to meet ambitious construction and operation requirements.<sup>8/</sup>

Finally, the Commission's proposed technical requirements<sup>9/</sup> appear to give licensees the flexibility that they need to offer their services. Thus, the Commission's

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<sup>6/</sup> See id., ¶ 20.

<sup>7/</sup> As an alternative, the Commission could divide the 28 GHz band into four blocks. The first two, comprised of 980 MHz each, would be used for LMDS. The remaining two, comprised of 20 MHz each, could be used for point-to-point microwave applications by LMDS licensees or others. The latter blocks could be allocated on a non-interference basis with other users in the band.

<sup>8/</sup> Rochester notes that other market definitions -- such as the cellular Metropolitan Statistical Areas and Rural Service Areas -- would also be appropriate. However, although the use of the BTAs for LMDS may be acceptable, their use in establishing the geographic scope of a license for Personal Communications Services ("PCS") would not be. See Amendment of the Commission's Rules To Establish New Personal Communications Services, Gen. Dkt. 90-314, ET Dkt. 92-100, Comments of Rochester Telephone Corporation at 16-18 (Nov. 6, 1992) ("Rochester PCS Comments").

<sup>9/</sup> Notice, ¶¶ 23-24.



decision not to establish a rigid channelization plan is correct.<sup>10/</sup>

In general, these proposals should help ensure the widespread availability of LMDS and should be adopted.

II. THE COMMISSION SHOULD ADOPT  
REGULATORY CLASSIFICATIONS FOR  
LMDS THAT ARE CONSISTENT WITH THE  
SERVICES BEING OFFERED.

The Commission requests comment on whether it should classify LMDS as private or common carriage and whether it should permit licensees to elect their own status.<sup>11/</sup> The Commission should decline to adopt this proposal. Rather, it should tailor the regulatory classifications of LMDS based upon the services actually being offered. As the Commission recognizes,<sup>12/</sup> LMDS technology may be used to provide both one-way broadcast services and two-way voice and data communications services. The classification of broadcast services as private carriage may be correct. However, two-way voice and data communications services are communications

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<sup>10/</sup> The Commission also requests comment on whether it should adopt a separate assignment for satellite services. Id., ¶ 22. Because of the multicell, multipoint configuration of LMDS systems, sharing this band between terrestrial and satellite services appears infeasible. Accordingly, the Commission should not create a separate assignment for satellite services.

<sup>11/</sup> Id., ¶¶ 25-26.

<sup>12/</sup> Id., ¶ 26 n.10.

common carrier services and should be classified as such. These services will be directly competitive with services -- such as cellular and landline exchange services -- that today are common carrier offerings. In addition, LMDS communications services likely will also compete with PCS, a service that the Commission should classify as common carriage.<sup>13/</sup> Thus, to the extent that these services will be substitutable, the Commission should treat them in a consistent manner. To do otherwise would provide one type of service provider with a regulatory advantage not shared by its competitors.

Moreover, a common carriage classification for LMDS communications services will promote efficient spectrum utilization. Common carriage includes the requirement to offer service indifferently to all potential customers within a provider's service territory. Thus, the existence of such a requirement will motivate LMDS providers to reach the maximum number of customers and, in that respect, will encourage efficient spectrum utilization.

III. THE COMMISSION SHOULD PERMIT ALL  
TECHNICALLY AND FINANCIALLY  
QUALIFIED ENTITIES TO APPLY FOR  
LMDS LICENSES.

The Commission is proposing to permit all qualified

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<sup>13/</sup> Rochester PCS Comments at 19-22.

entities to apply for LMDS licenses.<sup>14/</sup> The Commission has also tentatively rejected the request of the Wireless Communications Association ("WCA") that the Commission set aside one LMDS license per market to licensees for multipoint, multichannel distribution services ("MMDS").<sup>15/</sup> The Commission should affirm these conclusions.

As Rochester demonstrated in its PCS comments, an open entry policy will ensure that all entities with the requisite experience will be offered the opportunity to qualify for licenses.<sup>16/</sup> Rules artificially restricting entry will do no more than deny to consumers the benefits of having the most qualified providers offer LMDS.

In particular, the Commission should not preclude exchange carriers or cellular providers from qualifying for LMDS licenses. These carriers possess substantial expertise in offering communications services. They, accordingly, represent among the most experienced potential LMDS licensees. In addition, these carriers may utilize LMDS technology to complement their video dial-tone services and to provide much needed competition to the cable industry. On this basis, the

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<sup>14/</sup> Notice, ¶ 33.

<sup>15/</sup> Id., ¶¶ 18-19.

<sup>16/</sup> Rochester PCS Comments at 7-12.

Commission should decline arbitrarily to preclude exchange and cellular carriers from applying for LMDS licenses.

Finally, the Commission has correctly proposed not to reserve LMDS spectrum for MMDS operators.<sup>17/</sup> Although the Commission should not exclude such providers from applying for LMDS licenses, WCA has provided no justification for a set-aside. The Commission should, as it proposes, permit all financially and technically qualified entities to apply for LMDS licenses. However, it should not single out any particular class for preferential treatment.

IV. THE COMMISSION SHOULD ESTABLISH  
REASONABLE, YET AMBITIOUS,  
DEPLOYMENT REQUIREMENTS.

The Commission proposes that a licensee construct its LMDS system so that ninety percent of the population residing within the licensed area will have service available within three years of the grant of a construction permit.<sup>18/</sup> As Rochester describes above,<sup>19/</sup> the Commission should encourage the widespread availability of LMDS. However, the Commission must establish reasonable construction requirements as well. The proposed ninety percent service availability requirement is unreasonable. In many of the second-Tier BTAs -- such as

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<sup>17/</sup> Notice, ¶¶ 18-19.

<sup>18/</sup> Id., ¶ 32.

<sup>19/</sup> See supra at 4-6.

Rochester -- and certainly in the smaller BTAs, such a construction program would be economically unfeasible. The adoption of this proposal could, therefore, deter potential applicants from seeking to provide service to these areas. The result would be effectively to negate the Commission's goal of ensuring the widespread availability of LMDS.<sup>20/</sup>

As an alternative, the Commission should require licensees to make service available to fifty percent of the population residing within their licensed areas within three years of the grants of their construction permits. This requirement would result in the availability of LMDS to a significant portion of the population. At the same time, however, it would permit LMDS licensees to earn a return on their investment.

In addition, because the Commission is proposing that the initial license term last for only five years,<sup>21/</sup> the Commission can provide the opportunity for others to serve any vacant areas by adopting rules similar to its unserved area rules for cellular service.<sup>22/</sup> In this manner, the Commission

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<sup>20/</sup> Notice, ¶¶ 14-17.

<sup>21/</sup> Id., ¶ 40.

<sup>22/</sup> Amendment of Part 22 of the Commission's Rules To Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and To Modify Other Cellular Rules, CC Dkt. 90-6, Second Report and Order, 7 FCC Rcd. 2449 (1992).

may fairly balance the public's interest in the widespread availability of LMDS against licensees' needs to deploy systems that are economically viable.

V. THE COMMISSION SHOULD ADOPT  
APPLICATION PROCESSING PROCEDURES  
THAT AWARD EXCELLENCE AND  
DISCOURAGE SPECULATION.

As Rochester demonstrated in the PCS proceeding,<sup>23/</sup> the Commission should rely upon streamlined comparative hearings to award PCS licenses. The rationale underlying that proposal applies with equal force to the processing of LMDS applications. Lotteries simply encourage speculation and the Commission's attempts to tighten its lottery procedures to prevent this type of abuse have not been successful.<sup>24/</sup> Although comparative hearings do have their disadvantages -- principally in the time and resources that the Commission and the parties must devote to such proceedings -- they are better suited than lotteries for determining the most qualified applicant to whom the Commission should award a particular license.

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<sup>23/</sup> Amendment of the Commission's Rules To Establish New Personal Communications Services, Gen. Dkt. 90-314, ET Dkt. 92-100, Reply Comments of Rochester Telephone Corporation at 15-16 (Jan. 7, 1993).

<sup>24/</sup> Rochester PCS Comments at 25.

However, as Rochester further demonstrated,<sup>25/</sup> if the Commission is to rely upon lotteries, it must subject applicants to stringent requirements regarding their technical and financial qualifications. At a minimum, the Commission should establish significant filing fees and require applicants, in their initial filings, to demonstrate, in detail, their technical and financial qualifications to hold LMDS licenses.<sup>26/</sup>

Finally, regardless of which application processing method the Commission chooses to utilize, it should require licensees to meet reasonable, yet ambitious, post-award construction and operation criteria.<sup>27/</sup> In this manner, the Commission may ensure that LMDS is offered expeditiously and will help deter speculation in LMDS licenses.

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<sup>25/</sup> Id. at 25-26.

<sup>26/</sup> Id.

<sup>27/</sup> See supra at 9-12; see also Rochester PCS Comments at 27-28.

Conclusion

For the foregoing reasons, the Commission should adopt the proposals contained in the Notice together with the modifications suggested herein.

Respectfully submitted,

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